

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 Jesse Aron Ross,

5 Plaintiff

Case No. 2:22-cv-00259-CDS-VCF

6 Order Renewing Preliminary Injunction

v.

7 Calvin Johnson, *et al.*,

8 Defendants

9
10 Plaintiff Jesse Aron Ross, who is incarcerated and currently proceeding pro se,¹ brings
11 this civil rights lawsuit based on the defendants' alleged denial of his outdoor exercise time at
12 High Desert State Prison (HDSP). I previously determined that Ross is entitled to preliminary
13 injunctive relief. *See Order Granting Prelim. Inj.*, ECF No. 44. I have twice extended the
14 injunction. ECF Nos. 89, 108. I held a hearing on August 28, 2023, to receive supplemental
15 evidence and to hear additional testimony from the defendants to determine if a third extension
16 of the preliminary injunction is appropriate. Min. of Proceedings, ECF No. 111. During the
17 hearing, I heard representations from Lt. K. McKEEhan and Warden B. Williams regarding
18 HDSP's efforts to comply with the injunction order. *Id.*

19 For the reasons set forth herein, including consideration of the information provided by
20 the parties prior to the August 28, 2023, hearing (ECF Nos. 98, 101, 103, 110), as well as the
21 testimony presented at the status hearing, I hereby extend the injunction for another 60 days up
22 to and including October 28, 2023.

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26¹ I sua sponte appointed pro bono counsel for Ross after the June 2, 2023, injunction hearing. ECF Nos. 89, 90. Due to an inadvertent administrative error, my order appointing pro bono counsel was not received by the program coordinator. My order appointing counsel stands. The program coordinator is working to secure pro bono counsel for Ross.

1 I. Discussion

2 I adopt and incorporate as if fully set forth herein the law regarding renewing
 3 preliminary injunctions. *See* ECF No. 90 at 2, 4–5. As noted during the status hearing, there
 4 appears to be improvement in providing Ross access to outdoor time. However, approximately
 5 eight days before the August 28 hearing, a racially-motivated homicide occurred at HDSP. Since
 6 then, the facility has been on 24-hour lockdown. The testimony adduced during the hearing
 7 revealed that HDSP is unsure when the lockdown will be lifted as it depends on the length and
 8 findings of the homicide investigation. While the evidence demonstrates that HDSP has
 9 provided more opportunities for Ross to be out of his cell, the homicide raises concerns about
 10 HDSP's ability and willingness to allow inmates outdoor time currently and for an
 11 undetermined period into the future. These concerns are exacerbated by the previously
 12 established ongoing staffing shortages. *See* ECF No. 90 at 3. On August 28, Warden Williams
 13 testified that the department's hiring efforts continue and, as a result, the staff vacancy rate has
 14 decreased slightly. But he also acknowledged that staffing remains critically low, and the
 15 homicide forced him to reassign staff to conduct follow-up investigation, or perform other tasks
 16 related to facility safety.² As evinced by Warden Williams' recent testimony, these staffing
 17 shortages which previously caused reduced yard time are simply not temporary. And, while
 18 understandable, the homicide investigation is yet again curtailing Ross's time outside of his cell.
 19 Thus, there remains a clear need for injunctive relief.

20 Accordingly, the injunctive relief I previously ordered still comports with this Circuit's
 21 standards for the need, narrowness, and intrusiveness of injunctive relief under the Prison
 22 Litigation Reform Act, so I hereby renew my prior injunction (ECF Nos. 44, 90, 108) for another
 23 sixty days.

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25 ² I afford the Warden and his staff significant deference regarding the need and scope of the homicide
 26 investigation. It is well established that “a prison’s internal security is peculiarly a matter normally left to
 the discretion of prison administrators.” *Hewitt v. Helms*, 459 U.S. 460, 474 (1983) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 349 n.14 (1981)).

1 II. Conclusion

2 IT IS THEREFORE ORDERED that the injunctive relief ordered in the March 3, 2023,
3 order [ECF No. 44] is RENEWED. The preliminary injunctive relief set forth in that order—
4 requiring that Ross be given seven hours of outdoor exercise time per week—is RENEWED for
5 an additional 60 days from August 28, 2023.

6 IT IS FURTHER ORDERED that the parties provide status reports regarding
7 compliance with the injunction no later than Friday, October 13, 2023.

8 DATED: August 31, 2023

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11 Cristina D. Silva
United States District Judge

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